

Report of Investigation Regarding Pardon Attorney Roger Adams



Office of the Inspector General
Oversight and Review Division
December 2007

I. INTRODUCTION

This report describes the investigation by the Office of the Inspector General (OIG), Oversight and Review Division, into allegations that Pardon Attorney Roger Adams mismanaged the Office of the Pardon Attorney (OPA). The source of the allegations was a letter signed by several complainants dated June 21, 2007, addressed to the OIG.

[REDACTED]

When warned of the possibility that one or more employees might complain about these and other office matters, according to the complaint, Adams threatened to fire or transfer any employee who protested to the OIG.

[REDACTED]

During the OIG investigation, a witness also alleged that Adams made a racist comment concerning a pardon applicant.¹ We included this matter in our investigation.²

II. BACKGROUND

A. Adams's Background

After graduating from Boston College Law School, Adams served 3 years in the Judge Advocate General's Corps of the U.S. Marines. He moved to the Department of Justice (DOJ) in December 1972, when he joined the Criminal Division as an attorney. Except for two brief assignments to work on interagency task forces, Adams remained in the Criminal Division until early

¹ We investigated additional allegations, including, for example, [REDACTED]

Although we do not address them in detail in this report, we did not find evidence to substantiate these additional allegations.

² The OIG provided a draft of this report to Adams for his comment. On November 28, 2007, he provided comments, which we have attached at the end of this report. We do not address every one of his comments, but in footnotes at the conclusion of the relevant sections of this report we briefly address the main contentions of his response. In addition, in response to his comments we made some corrections to the report where we believed appropriate. However, the conclusions to the report have remained unchanged.

1993, when he was assigned for a short time to the White House Counsel's Office. Following that, he moved to the Office of the Deputy Attorney General, where he remained until he was appointed Acting Pardon Attorney in November 1997. He became Pardon Attorney in June 1998.

B. Background on OPA

The Pardon Attorney helps the President decide who should receive clemency (either a pardon, commutation of sentence, remission of fine or restitution, or a reprieve) for federal crimes.

An offender seeking clemency starts the process by filing an application, which is sent to the Pardon Attorney for review and possible investigation. The OPA reviews over 1,000 applications a year and prepares a recommendation to the President for almost every one.³ Typically, each recommendation is written in one of three ways: (1) one-page "summary denials;" (2) multi-page "full denials;" and (3) multi-page "favorables." The OPA writes summary denials when the facts appearing in the clemency application itself make it clear that the application should not be granted. Full denials are written when the Pardon Attorney has decided that the application should be turned down for reasons that are not as clear-cut and simple as those that would justify a summary denial. The OPA writes favorables when the Pardon Attorney believes that an application should be granted.

Adams and other OPA attorneys estimated that it took an attorney about 2 hours to prepare a summary denial and considerably longer to prepare a full denial or a favorable. Full denials and favorables are drafted only after a thorough investigation that can include a background investigation prepared by the Federal Bureau of Investigation and recommendations from the local United States Attorney who prosecuted the defendant, the judge who sentenced the defendant, and other interested parties.

The OPA currently has 13 employees. In addition to Adams, the office has a Deputy Pardon Attorney, four permanent line attorneys, one attorney on detail to the office, an executive officer, and five clerical staffers.⁴ Although

³ The recommendations sent to the President are called "letters of advice." A clemency request can be mooted out by the death of the applicant or, if the applicant is seeking commutation, by the release of the applicant from incarceration, or by other factors. In those instances, the OPA does not write a memorandum.

⁴ As explained more fully later in this report, the Executive Officer has left the OPA for another job within DOJ. Accordingly, his position is currently unfilled

[REDACTED]
[REDACTED]
(cont'd.)

there has been turnover in the clerical staff, all of the permanent attorneys have been with the OPA since at least 1998.⁵

Except for the attorney on detail, most OPA attorneys telecommute and work from home twice a week; one works from home once a week.

The OPA uses an internal computer database, called the Electronic Case Tracking System (ECTS), to track the progress of every application that comes into the office. By consulting the ECTS, Adams can determine, for example, if an application is still pending in the office, has been sent to the Deputy Attorney General's office for review, or has gone to the President for a final decision. In addition, because the ECTS lists the name of the attorney assigned to each case, it can be used to give information about the number of cases each attorney completes each year.⁶

III. OIG FINDINGS

To investigate the allegations, we interviewed Adams and all OPA employees, save one computer technician. In addition, we reviewed extensive documentary evidence, including time and attendance records, memoranda, and e-mails.

In this section of the report, we examine in turn various allegations of misconduct regarding Adams. With each allegation, we provide the specific allegation, the evidence regarding those allegations, and our findings.

A. Discrimination in Clemency Applications

1. Allegation

During the course of the investigation, one of the complainants said that Adams had made a racist statement about [REDACTED], a Nigerian clemency applicant whose request for a pardon was pending with the President when we interviewed Adams. According to the complainant, the decision

⁵ The attorney on detail has been with the office since April 2007.

⁶ The ECTS system is not completely accurate, however. For instance, in the ECTS database almost all of the commutation cases are "assigned" to Adams even though he has the attorneys complete a few of them. Also, the attorneys sometimes work on cases that are not formally assigned to them. Therefore, the ECTS may undercount the number of cases on which each attorney has worked.

whether to recommend a grant or denial of [REDACTED] pardon application hinged on whether one believed that [REDACTED] was honest or lying about the circumstances that led to his arrest and conviction. As the complainant and Adams were discussing the application and [REDACTED] credibility, the complainant said Adams remarked: "This [REDACTED] might sound racist, but [REDACTED] is about as honest as you could expect for a Nigerian. Unfortunately, that's not very honest."

2. Evidence

Adams denied that he discriminated in any manner when considering clemency applications. However, he told the OIG that he thought ethnic background was an important consideration in pardon decisions, and that he might have discussed [REDACTED] nationality and its relationship to his credibility. According to an excerpt from the OIG's interview with Adams:

Q: Let me ask you if you made this comment: [REDACTED] is probably about as honest as you can expect for a Nigerian. Unfortunately for him that's not very honest."

A: I don't necessarily recall that, but I might have. That's a legitimate comment to make in the course of my work. You have to be, you have to understand now, that we are giving advice to the President. If the case goes south, it comes back on him and on me. In general and on average Nigerian immigrants, they commit more crimes than other people. This was a serious drug case that this guy committed. If I said that, it was probably in the context of the way he had described his case. I believe he had not described it honestly, and that is an important criteria. I guess I really feel this is really unfair, this allegation of racism here. You know, the person's ethnic background and the way a commutation, a pardon in his case, is going to be perceived in the community, that's an important consideration. It's one that the White House wants to know about.

3. OIG Findings

Article II, Section 2 of the U.S. Constitution gives the President the "power to grant reprieves and pardons for offenses against the United States."

Because "pardon and commutation decisions have not traditionally been the business of the courts," *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981), few cases discuss what limits, if any, there are to the executive's clemency powers. While courts have been reluctant to put restrictions on those powers, the Supreme Court articulated some limits in *Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998). Justice O'Connor, in her plurality opinion, stated that:

I believe that the Court of Appeals correctly concluded that some *minimal* procedural safeguards apply to clemency proceedings. Judicial intervention might, for example, be warranted in the face of a scheme whereby a state official flipped a coin to determine whether to grant clemency, or in a case where the State arbitrarily denied a prisoner any access to its clemency process.

523 U.S. at 289. (emphasis in original.)⁷ See *Duvall v. Keating*, 162 F.3d 1058, 1061 (10th Cir. 1998) (noting that J. O'Connor's concurring opinion is the plurality opinion on this issue). Moreover, although it is not part of the plurality, Justice Steven's opinion, concurring in part and dissenting in part, stated:

I think, for example, that no one would contend that a Governor could ignore the commands of the Equal Protection Clause and use race, religion, or political affiliation as a standard for granting or denying clemency. Our cases also support the conclusion that if a State adopts a clemency procedure as an integral part of its system for finally determining whether to deprive a person of life, that procedure must comport with the Due Process Clause.

523 U.S. at 292. *Woodard*, then, suggests that using race or national origin as a basis for denying clemency would be unconstitutional because it would arbitrarily deny an offender access to the clemency process.

Federal regulations governing clemency are minimal. 28 C.F.R. § 1.6 requires the Attorney General to conduct "such investigation . . . as he or she may deem necessary and appropriate" and to consider "all pertinent information" when deciding whether to recommend clemency. The DOJ website quotes the U.S. Attorney's Manual in citing five factors that will be considered when deciding whether to recommend a pardon: (1) post-conviction conduct, character and reputation; (2) seriousness and relative recency of the offense; (3) acceptance of responsibility, remorse, and atonement; (4) need for relief; and (5) official recommendations and reports.⁸ National origin is not mentioned as a permissible factor.

⁷ *Woodard* dealt with the Ohio Constitution's clemency power, which provides that: "The Governor shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as the Governor may think proper; subject, however, to such regulations, as to the manner of applying for commutations and pardons, as may be prescribed by law." Ohio Constitution, Art. III, Sec. 11. There is no indication in federal case law that the Supreme Court would approach federal clemency issues any differently.

⁸ These factors are published on the DOJ website under the title "Standards for Consideration of Clemency Petitions."

The memorandum that went to the White House recommending denial of [REDACTED] application did not mention [REDACTED] national origin in a derogatory manner, nor did it link his national origin to his credibility. Indeed, the facts that were contained in the memorandum indicate a sufficient basis for denying [REDACTED] application, regardless of where he was born.

As noted above, the complainant told the OIG that the complainant heard Adams make the statement that "this might sound racist, but [REDACTED] is about as honest as you could expect for a Nigerian. Unfortunately, that's not very honest." Adams told the OIG that he did not recall making the comment, but he also told the OIG that he believed it would be a "legitimate comment" in the course of his work, and that he thought "ethnic background" is an "important consideration" in deciding whether to recommend a pardon. He stated to the OIG that "in general and on average Nigerian immigrants, they commit more crimes than other people" and that "the person's ethnic background and the way a commutation, a pardon in his case, is going to be perceived in the community, that's an important consideration."⁹

Based on his statements to us and the complainant's allegation, we conclude that Adams did comment on [REDACTED] national origin when discussing his credibility. We believe that Adams's comments – and his use of nationality in the decision-making process – were inappropriate. We were extremely

⁹ In his November 28th response, Adams wrote that he had never considered "a person's race, ethnic origin or any other factor in a negative way in making a recommendation." While he said that he could not remember the original conversation with the complainant about [REDACTED], he asserted that he was confident that he used the term "Nigerian heroin dealer" to refer to [REDACTED], not "Nigerian." Adams did not dispute the accuracy of the comments he made during his interview with the OIG, but claimed that they were made during the course of a long interview, that he was surprised by the questions about racism, and that he answered with a mixture of incredulity and anger. We find Adams's November 28th response [REDACTED] unconvincing. During his OIG interview, Adams never contended that he had called [REDACTED] a "Nigerian heroin dealer," rather than referring to him as a "Nigerian." Furthermore, Adams explicitly argued in his OIG interview that a Nigerian was less trustworthy than a non-Nigerian and that it was appropriate to consider this when deciding what recommendation to make to the President.

[REDACTED]

troubled by Adams's belief that an applicant's "ethnic background" was something that should be an "important consideration" in a pardon decision.¹⁰

B. Threats to Retaliate

1. Allegation

The complaint filed with the OIG also contained an allegation that several years ago Adams threatened to retaliate against any employee who complained about him outside the Pardon Attorney's office. In particular, the complaint stated, Adams said it would "not be in the best interest" of any employee to complain about his management techniques to the Office of the Inspector General, and that he would "not tolerate" having any such employees on his staff, even during the pendency of an investigation."

2. Evidence

[REDACTED] wrote three memoranda describing comments allegedly made by Adams about this subject. The first memorandum, dated September 25, 2001, and entitled "Memorandum For The Record," states that during a conversation that same day to discuss several personnel issues [REDACTED] mentioned that some clerical employees felt that they were being treated unfairly:

I mentioned to Roger that I thought the fairness issue was one that could possibly, although not likely, result in an employee grievance. Roger's reply was that no employee was so valuable to the office that they could not be replaced and that he would not have employees working for him that lodged a grievance about attorneys work habits. He stated that he did not think that he was required to have an employee who files such a grievance continue to work for him while the grievance was being investigated He also said that he expected an employee would first come to him prior to lodging a grievance Roger replied that it would not be in . . . any ones best interest to go outside of the office without first coming to him. I took this as a threat.

The second memorandum, dated September 26, 2001, and also entitled "Memorandum For The Record," discusses a meeting [REDACTED] held with a DOJ Justice Management Division (JMD) employee [REDACTED] in "late September." According to the memorandum, [REDACTED] met with [REDACTED] because Adams had "directed me to find out what his [Adams's] rights were in

regards to removing employees from the office while their grievance against him was being investigated." According to the memorandum, [REDACTED] told [REDACTED] that an employee who lodged a complaint had a right to keep his position "unless there were other extenuating circumstances such as that person posing a physical threat to themselves or other or there [sic] work being unacceptable."

In an e-mail dated October 1, 2001, [REDACTED] wrote [REDACTED] that, based on their discussion, he had told Adams that Adams was not "authorized to remove, detail, transfer or otherwise 'retaliate' against an employee simply because they filed an IG complaint." According to that e-mail, "While Roger [Adams] seemed to accept my answer, I'm not sure he agreed with it or totally trusted my opinion as a non-attorney. He asked for the name of an attorney who he could speak with and I provided him the name you provided [REDACTED].

A third memorandum, dated January 17, 2002, and entitled "Memorandum To The Record," discusses a conversation between [REDACTED] and Adams about the work performance of [REDACTED]. During the conversation [REDACTED] wrote, he told Adams that other employees felt that [REDACTED] was not adequately performing her duties, and that that feeling might lead some employees to complain openly. Adams "responded that he didn't want anyone working for him that he could not trust and that he would remove any staff member who lodged a complaint outside of the office."

[REDACTED] told the OIG in our interview of him that Adams had once told him that "if anyone goes to the IG in this office, I'll fire [him]." A second complainant said that Adams had told him that "it would not be in the best interest of any employee" to file a complaint outside the office "and that he [Adams] wasn't required to keep anybody on staff if they had filed a complaint against him." In June 2005, [REDACTED] e-mailed a third complainant about various instances of alleged "incorrect T&A slips." In the e-mail [REDACTED] wrote that when he had alerted Adams about the problem, Adams "said that it would not be in my best interest to press this issue and I took this as a direct threat . . . I am reminded that Roger told me that if anyone ever filed a complaint against him that he would fire that person and he meant it . . . I need to keep this job . . ." The third complainant replied that "I too am in no position to file a complaint . . . I cannot risk being fired either . . ."

When questioned by the OIG about these alleged statements, Adams said that he did not specifically remember discussing this issue with [REDACTED] or any other employee, but he acknowledged that the allegations generally reflected his feelings on the issue. According to excerpts from his OIG interview:

Q: Did you ever say that anyone who filed a grievance, either IG or just a more or less formal grievance wouldn't continue to work for you in your office? . . . Or words to that effect?

A: Gee, I don't think so, but I'm, I never would have said that in a threatening manner to someone. It's possible in a private conversation that I might have said that to someone. I honestly don't know. . . . It is my thought, though, that if someone, you know, I'll tell you this honestly. It's very hard for me to continue to work with somebody who has made complaints, like, like this about me, and that's just a fact. I do feel that way, and if that's wrong, I'm sorry, but that is the way I feel about it.

Q: Do you remember, so you don't remember any particular discussion with [REDACTED] or anyone else saying that I wouldn't want anybody working with me?

A: I don't remember any particular discussion, but it might have been that I mentioned to [REDACTED] or somebody that that's the way I felt.

[REDACTED] told the OIG that she had no memory of any such conversation with Adams.

3. Findings

The Inspector General Act of 1978 and its implementing regulation both prohibit supervisors from threatening to retaliate against employees who file complaints with the OIG:

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

5 U.S.C. App. 3, § 7(c); 28 C.F.R. § 0.29g. The Whistleblower Protection Act, 5 U.S.C. § 2302(b)(8), contains a similar prohibition.

Adams denied making the alleged statements attributed to him, but he did suggest that the sentiments embodied in the alleged statements reflect his feelings. We believe that Adams's admission, while not an admission that he made any direct threats, makes it more likely that he did, in fact, make the alleged statements. Based on our interviews of the complainants, the contemporaneous memoranda written by [REDACTED], and the June 2005 e-mails,

we concluded that Adams did make statements suggesting that he would retaliate against employees who made complaints outside the office, that employees became aware of those statements and the sentiments behind them, and that employees believed that they would be punished if they complained to the OIG about the OPA management. While we recognize that several of the alleged statements by Adams were made as much as 5 or 6 years ago, the delay in reporting them could be in part due to the chilling effect of Adams's comments. We believe that these comments violate the Inspector General Act and the Whistleblower Protection Act and were inappropriate.¹¹

C. Time and Attendance Abuse

1. [REDACTED]

a. Allegations

[REDACTED] In particular, the complainants charged [REDACTED] was allowed to take two 15-minute breaks each day in addition to her 30-minute lunch, as well as numerous trips to the bank, bathroom, and other places.

¹¹ In his November 28th response, Adams admitted saying during his OIG interview that he felt he could not work with a person who filed a complaint, but said that he could not remember his exact conversations with [REDACTED] in 2001 and 2002. In any event, Adams stated in his response that none of the complainants were "chilled" by any comments he might have made, but instead filed their complaint in an attempt to prevent an office reorganization that he was in the process of implementing. We find Adams's arguments on this issue unpersuasive. As noted in the report, Adams's threats of retaliation were memorialized by two different OPA employees in various contemporaneous e-mails and memoranda. Moreover, Adams's denials in his OIG interview were equivocal: when asked if he had ever threatened to fire anyone who filed a grievance with the OIG, he said, "It's possible in a private conversation that I might have said that to someone." Furthermore, even if Adams is correct that his comments were disclosed to the OIG in an attempt to prevent an office reorganization (an allegation that is unsupported by any evidence other than Adams's own assertions), that does not undermine the evidence that Adams did, in fact, make the retaliatory statements.

[REDACTED]

b. Evidence

Time and Attendance – Adams told the OIG that he permitted [REDACTED] to take two 15-minute breaks every day in addition to her 30-minute lunch break and to take other unscheduled breaks for purposes such as going to the bathroom or bank or running general errands. However, Adams said,

[REDACTED] breaks were neither longer nor more numerous than those taken by a number of other OPA employees. In addition, [REDACTED] and Adams agreed – and e-mail records confirmed – that [REDACTED] at times combined her two 15-minute breaks with her 30-minute lunch break to take a 60-minute break, sometimes beginning as early as 9:30 a.m.

[REDACTED] told the OIG that she regularly took the two 15-minute breaks without submitting leave slips for them. However, she stated that she submitted leave slips if she took any *additional* breaks of 15 minutes or longer.¹³ The OPA timekeeper's records show that [REDACTED] had submitted leave slips on many occasions for breaks.

[REDACTED]

¹³ [REDACTED] said that she did not put in leave slips if the additional breaks that she took were less than 15 minutes long.

[REDACTED]

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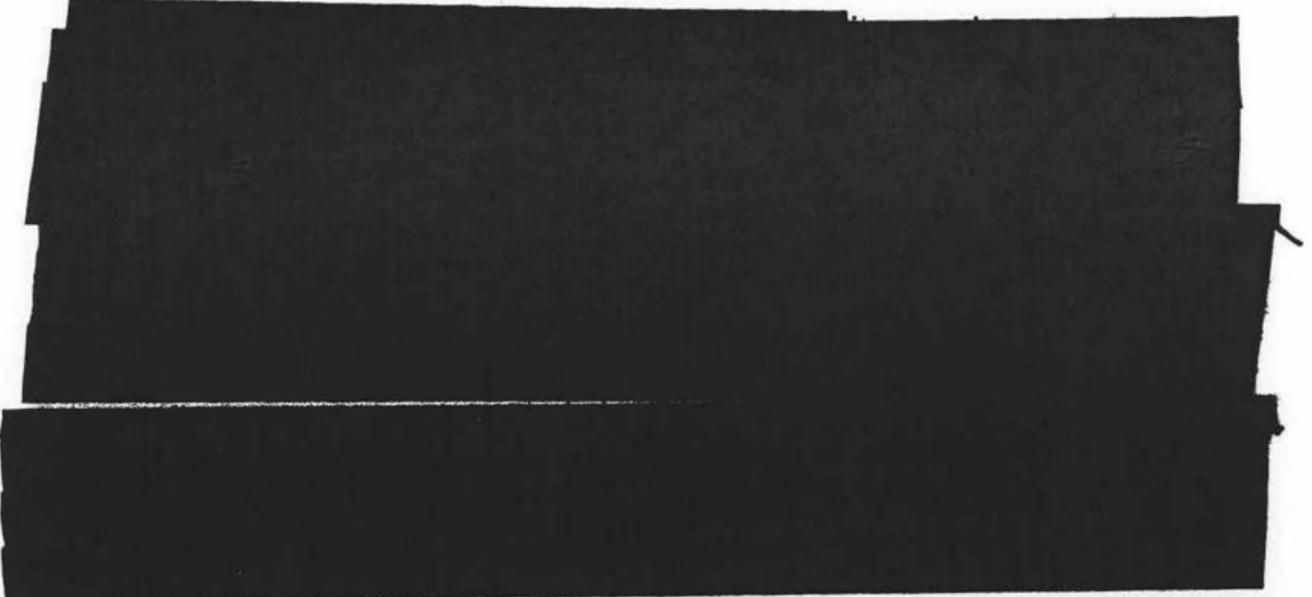
[REDACTED]

c. OIG Findings

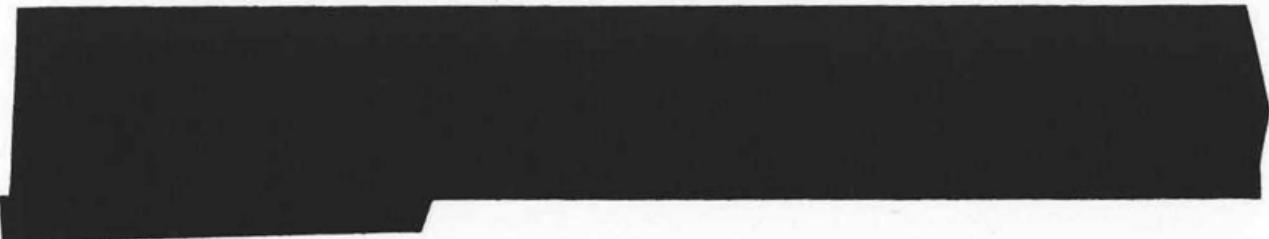
The DOJ website that addresses lunch breaks states that "there are no specific statutory, regulatory, or Department-level policies regarding the establishment of lunch periods" and that "Bureaus may establish such lunch periods as they deem appropriate." See www.usdoj.gov/jmd/ps/lunch.htm. (emphasis in original). Accordingly, employees may take a 30-minute unpaid lunch break, as well as short paid breaks, if authorized by a supervisor. However, as more fully explained on the OPM website (which can be reached via a link from the referenced DOJ website), see <http://www.opm.gov/oca/worksch/html/lunch.htm>, short paid breaks may not be added to the beginning or end of the lunch break in order to extend the length of the lunch break. Adams violated OPM rules and policies when he allowed [REDACTED] to add the 15-minute breaks to her lunch period, thereby extending her lunch to 60 minutes. Furthermore, Adams permitted the extended lunch period over the repeated objections of his executive officer who warned him that it was not permitted, and despite complaints from other employees who felt that they, too, should receive 15-minute breaks like [REDACTED]. At a minimum, we believe that

[REDACTED]

Adams should have consulted with JMD to determine if the break practices were allowable.¹⁷



¹⁷ In his November 28th response, Adams noted that the JMD website states that there are "no specific statutory, regulatory or Department-level policies regarding the establishment of lunch periods" and that supervisors may "establish such lunch breaks as they deem appropriate." In addition, he wrote, if he did violate the OPM rules, he allowed only "occasional" extended lunch periods and did not allow [REDACTED] to be paid for time she did not work. We do not disagree with Adams's response and agree that the applicable websites are confusing.



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D. Archiving Documents

1. Allegation

[REDACTED]

Furthermore, the complaint alleged Adams kept several historical documents and had them framed at a local frame shop at [REDACTED] for display in the OPA offices.

2. Evidence

[REDACTED]

When offices want to keep an older record for framing or some other similar purpose, the NARA will generally send them a high-quality copy, but not the original, according to Gary M. Stern, general counsel for the NARA.

[REDACTED]

[REDACTED]

[REDACTED]

Adams acknowledged that not all of the older documents were sent to the NARA. Instead, he said that he kept several original documents of historical interest – one, for instance, had been signed by Clarence Darrow, another by President Franklin D. Roosevelt – in the OPA office and had them framed for display.

Furthermore, Adams stated that copies of those documents had already been sent to the archives and that he was not obligated to send the originals.

3. Findings

However, we found that Adams's decision to frame the original documents, rather than copies, violated federal regulations.²⁸

²⁸ In his November 28th response, Adams wrote that he had only nine original documents framed, that none of them were letters of advice, and that he was unaware of any regulation preventing him from framing the originals. He said that he would contact NARA and see if the originals should be returned or whether he could retain them under one of the regulatory exceptions. NARA's General Counsel told the OIG that NARA does not normally permit agencies to retain originals. We believe that Adams's proposal to contact NARA about the possibility of making an exception to that rule is appropriate.

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IV. CONCLUSION

As described above, our investigation substantiated several allegations raised against Adams. [REDACTED]

First, we found that Adams appeared to have improperly considered one applicant's Nigerian origin when deciding not to recommend clemency for that applicant. Although the memorandum to the President recommending denial of the pardon did not mention the applicant's national origin in a derogatory way, Adams stated to the OIG that "a person's ethnic background . . . [is] an important consideration" in deciding clemency applications. We found Adams's statements and his perception that it is appropriate to consider national origin when assessing pardon applications to be highly inappropriate.

In addition, we found that on one or more occasions Adams made statements that could be construed as threats to retaliate against employees who made complaints outside the OPA about his management. Such statements were in violation of the Inspector General Act and the Whistleblower Protection Act and were inappropriate.

We found that Adams violated DOJ rules when he permitted [REDACTED] to take a 60-minute lunch by adding her two 15-minute breaks to her 30-minute lunch break.

[REDACTED]

[REDACTED]

[REDACTED]

However, we found
that Adams should have framed copies of the historical documents, not the
originals.

[REDACTED]



U.S. Department of Justice

Pardon Attorney

Washington, D.C. 20530

NOV 28 2007

MEMORANDUM

TO: Glenn A. Fine
Inspector General

FROM: Roger C. Adams *RCA*
Pardon Attorney

Subject: Response To The Draft Report Concerning Allegations That I Mismanaged the Office of the Pardon Attorney

Introduction. Initially, I appreciate being given the chance to see the draft report and to respond to it. I disagree with most of the conclusions set out at the end of the draft report and will respond to each one in turn. I will then respond to the claims throughout the draft report that I have mismanaged the office or have been lax in its management.

1. The finding that I appeared to have considered an applicant's Nigerian origin when deciding not to recommend clemency and the alleged statement that a person's ethnic background is an important consideration.

I find this allegation particularly disturbing and I can state without reservation that I never consider a person's race, ethnic origin, or any other such factor in a negative way in making a recommendation.

This allegation apparently stems from information received from one of the persons who has made complaints about me, [REDACTED] and concerns my recommendation in the case [REDACTED]

[REDACTED]

[REDACTED]

As best I can determine, the discussion I had with [REDACTED] concerning the recommendation I was going to direct him to prepare [REDACTED] would have taken place sometime in late 2005, after the receipt of the November 22, 2004 letter from the U.S. Attorney's office as the letter of advice was sent to ODAG on January 31, 2006. At that time we apparently discussed the question of [REDACTED] acceptance of responsibility. I cannot recall the conversation but in any conversation I may have had with [REDACTED] I am very confident that I would have used the term "Nigerian heroin dealer." If [REDACTED] is claiming that I made the statement that [REDACTED] was "probably about as honest as you can expect for a Nigerian," I can only submit that what I said was that he was "probably about as honest as you can expect for a Nigerian *heroin dealer*." (Emphasis added.) This is obviously very different from the suggestion that I was

[redacted] referring to the honesty of Nigerians generally.³ In any event, I understood the question about [redacted] and phrased my answer in terms of comments I may have made about a Nigerian drug dealer, not about Nigerians generally.

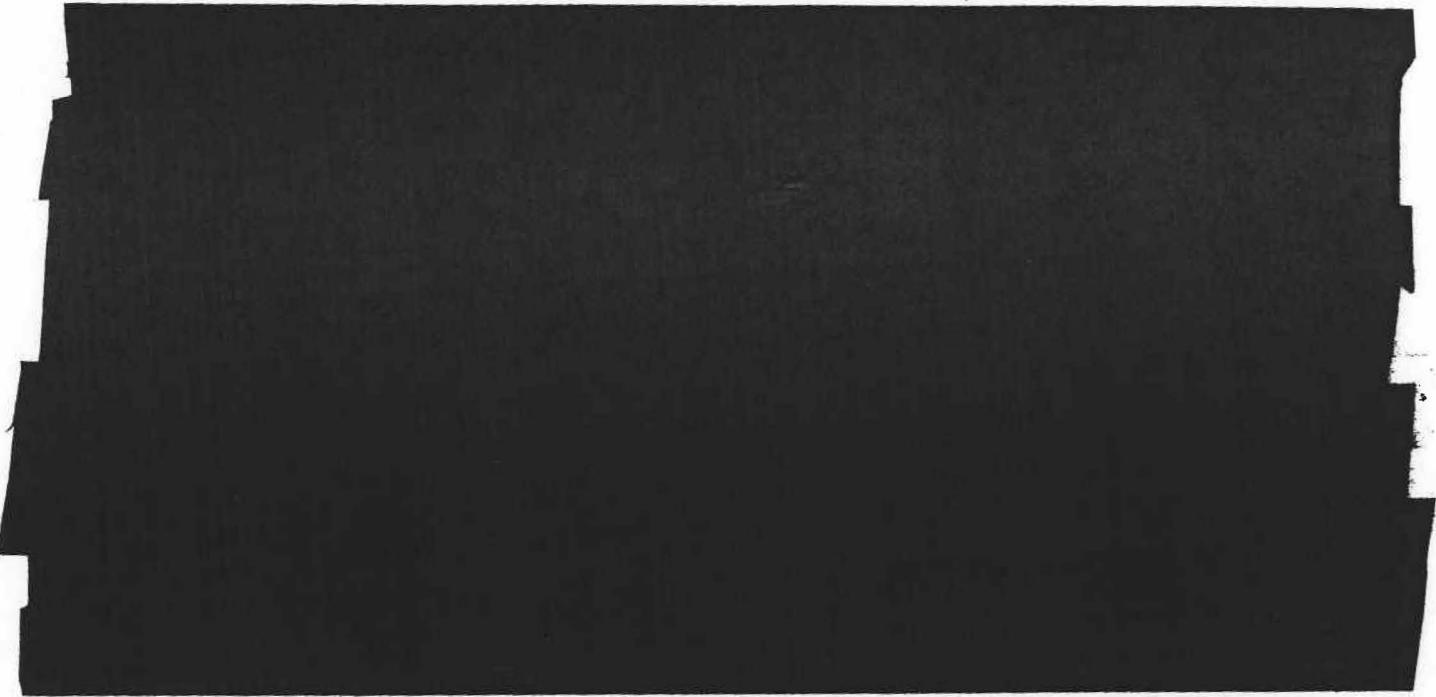
As for the statement attributed to me during the course of my interview with IG personnel, that a person's ethnic background is an "important consideration," I do not claim that the quotation is inaccurate.⁴ My answer was made in the course of a meeting of at least six hours, and as I went into it I had thought that it would deal with allegations that I had "condoned abuses of time and attendance," the exact phrase used by IG personnel when I was informed, about two months prior to the interview, that their investigation had begun. As a result, I was surprised to have allegations of racial prejudice in case programming made but, as I recall the interview,

"I might be better able to recall the exact conversation if an important part of [REDACTED] file had not been apparently removed. Every pardon case in my office contains in the file jacket what is called a "blue sheet." On the blue sheet, the attorney assigned to the case and I memorialize conversations we have had about the case and other important matters, such as my decision to refer a case to the FBI for a background investigation or to refer the case to the U. S. Attorney for comment. The referral of a case to a U.S. Attorney is a significant matter, because we are asking the prosecuting office to devote resources to the matter, and is never undertaken without my approval. The last entry on the blue sheet in [REDACTED] file is March 15, 2004, when I directed a subpoena to [REDACTED] several times (but not including sending a request for comment to the United States Attorney). The request to the U.S. Attorney was first sent on May 13, 2004, and, having had no response, a reminder was sent on January 26, 2004. These are matters that normally would have been reflected on the blue sheet. Although [REDACTED] blue sheet consists of only two pages, the type are held to be by two columns. Because only one column would have been needed to contain two pages, I believe there was a third page of the blue sheet (the other page of which is the first two pages of [REDACTED] which has been removed very likely by

I believe the missing page would reflect any conversation I would have had with him and probably would have reflected that I was concerned with the honesty of the particular Nigerian drug dealer in question, not with Nigerians generally. I have previously called the matter of the apparently missing page to the attention of the IG personnel who interviewed me. It is also instructive to note that the second entry in the blue sheet for [REDACTED] written by [REDACTED] begins: "Pet[itioner], a Nigerian national," and then goes on to describe the offense. In short, several persons involved in [REDACTED] case referred to his Nigerian nationality.

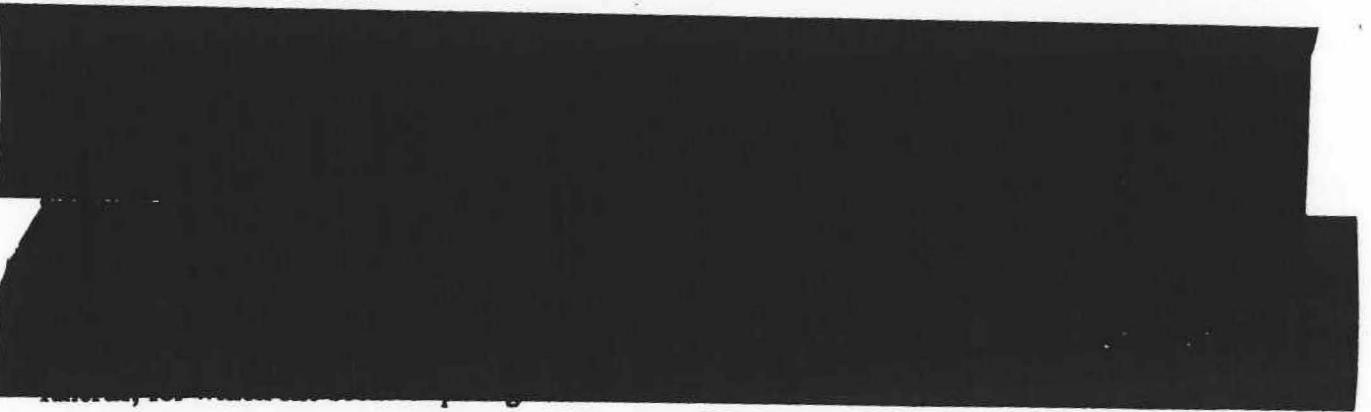
'I previously asked for an opportunity to see a transcript of my interview, but the request was denied.'

of incredulity and anger as I attempted to answer the investigators' questions in this area.⁶



2. The finding that I "made statements that could be construed as threats to retaliate against employees who made complaints outside the OPA about [my] management."

Initially, I find it rather difficult to respond to things I allegedly said to ██████████ 2001 and 2002. Unlike ██████████ apparent practice, I did not routinely create memoranda of our meetings. I do recall that he began making references to his – and more frequently unnamed "various people in the office" – possibly going to the Inspector General on occasions when I declined to adopt his suggestions in various matters. As I told the person on the IG staff who interviewed me, I do not recall any of the specific meetings apparently recounted by ██████████ in file memoranda in 2001 or 2002, but I do recall being irritated at his comments, and it was about this time that I realized I was quite uncomfortable working with him and that my office would be better off if we used the services ██████████ as the



office had until early 1997, when my predecessor hired [REDACTED] I took no steps that would result in removing [REDACTED] however, until November 2006, when I began discussions with [REDACTED] personnel about my office's going back to using the [REDACTED] but at the same time finding another job for [REDACTED] in the Department. I did not learn that this investigation of me had begun until nearly eight months after that.

As for the quoted statement in the draft report that I made during my September 2007 interview with the IG investigators, that I did not feel I could work with anyone who has made complaints against me such as the ones that caused the IG staff to start this investigation, I certainly said that. My thought at the time, as it was from when I first learned of the investigation, was that [REDACTED] hoped to have me fired, and that they made their complaints with full realization that either both of them, or I, would likely have to leave the office after the investigation was concluded. It was that thought -- that after the investigation was over I would not be working with either of them -- that I had when I said I would find it very hard to continue to work with them. However, I have not retaliated against either one of them or against [REDACTED]

[REDACTED]

[REDACTED]

As for the statement in the draft report that the delay in reporting the matters reflected in [REDACTED] 2001 and 2002 file memoranda and a series of e-mails he exchanged with another complainant (almost certainly [REDACTED]) could be in part due to the chilling effect of Adams' comments," which led to the conclusion that my comments (in 2001 or 2002) "violate[d] the Inspector General Act and the Whistleblower Protection Act and were inappropriate," I can only say that I believe nothing I have said to [REDACTED] or several years would have "chilled" his desire to make complaints about me [REDACTED]

Much more important to his timing however, was the fact that I was, in late July, close to abolishing his position, but at the same time moving him to another position in DOJ

In sum, none of the complainants felt "chilled" about making allegations against me. Rather, they were biding their time until it would do them the most good, by blocking my abolition of [REDACTED] position, and potentially cause me the most embarrassment.

3. The finding that I allowed [REDACTED] to violate DOJ rules by adding two 15-minute breaks to her lunch period.

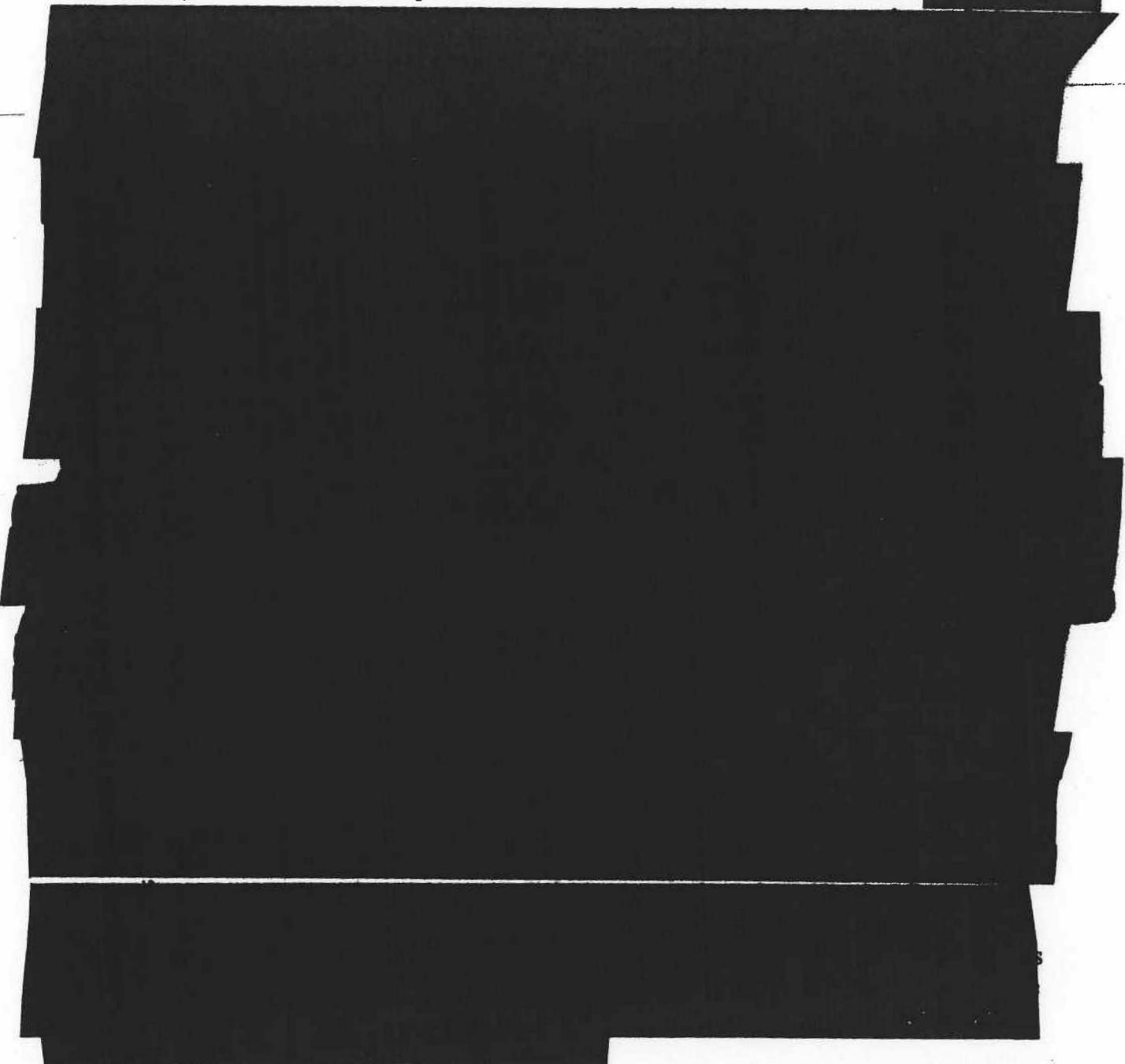
I do not dispute that I, on very infrequent occasions, allowed [REDACTED] to add some time to her lunch period, and that apparently violated a 1977 Comptroller General Opinion cited in the draft report. The draft report then concludes that this violated DOJ "rules and policies," but does not specify which ones. As a matter of fact, the web site cited in the draft report (www.usdoj.gov/jmd/ps/lunch.htm) contains the following statements: (1) "There are no specific statutory, regulatory, or Department-level policies regarding the establishment of lunch periods"; (2) "Section 6101(a)(3)(F) of title 5, U.S. Code, places a general limit of one-hour on breaks in an employee's basic work day"; (3) "Subject to the one-hour limit on breaks, and any applicable bargaining obligation, Bureaus may establish such lunch breaks as they deem appropriate." Whether I violated a 1977 Comptroller General Opinion or a DOJ rule, I would submit that [REDACTED]

[REDACTED] and allowing occasional extended lunch periods is fairly common in the Department, as the above web site clearly implies.

[REDACTED] In any event, the complainants were able to raise this issue only because [REDACTED] faithfully and openly told me and other employees she was

going to use a break to add to a lunch period. Other persons who occasionally took extended lunch periods did not always inform me.

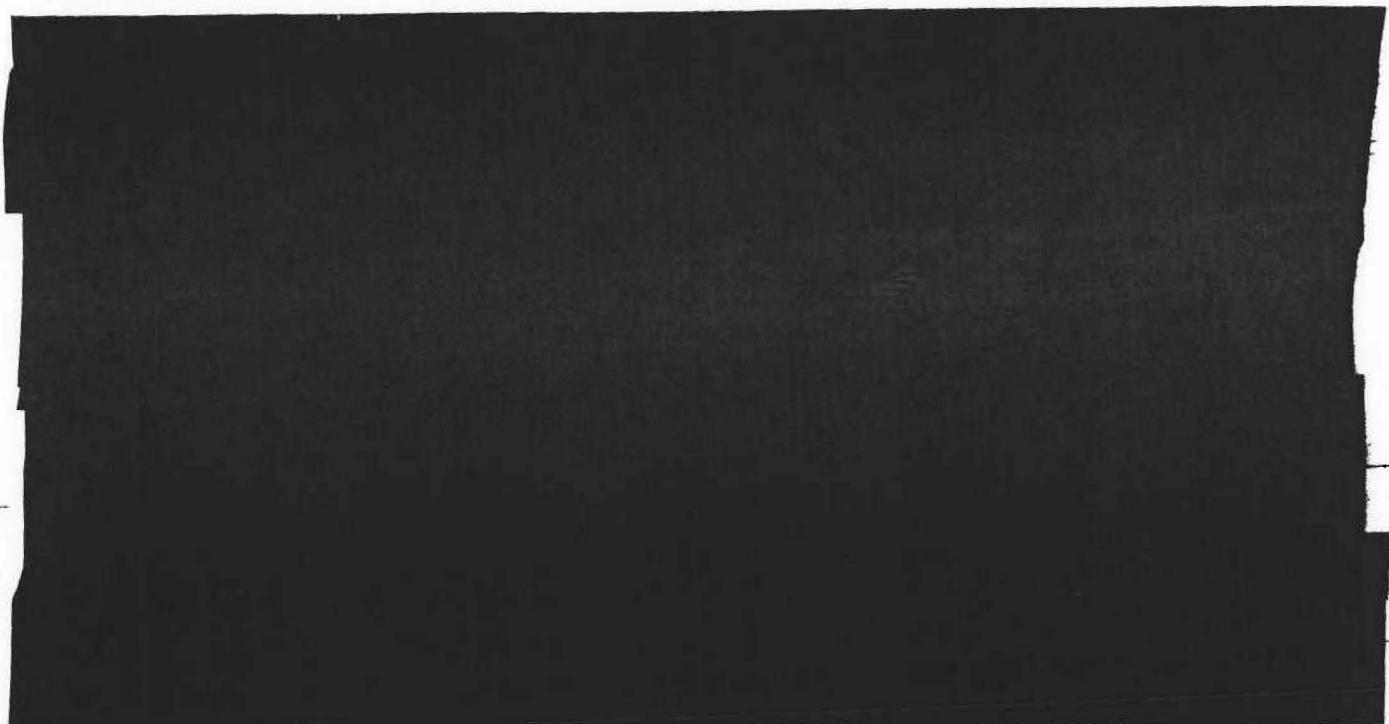
As for the comment in the report that "Adams permitted the extended lunch period over the repeated objections of his administrative officer," by the time this became an issue, in 2006 or 2007, I had lost any confidence in [REDACTED] ability or willingness to provide me accurate advice in personnel matters. For example, with respect to the specific issue of breaks, he told me during 2006 that there was no authority for anyone to take a short break (apart from the 30 minute lunch break) *at all*. As the draft report notes, such additional breaks are authorized. [REDACTED]



**ENTIRE PAGE
REDACTED**

The following is a list of findings:

5. The finding that I should have had framed copies, rather than originals, of historic documents that had been in OPA years before my arrival.



As for the conclusion that I violated federal regulations by retaining and framing some documents rather than sending them to NARA, I would note that I have had a total of nine documents framed. None of them were contained in the so-called "historical files," and none of them were copies of letters of advice. Rather, they were in various file cabinets in the office where they had apparently gone unnoticed for many years before my arrival. Some of them were discovered as the office was searched for records responsive to FOIA requests and some at other times. My first instruction with respect to these documents was that they were to be stored in the office's safe, because documents signed by Calvin Coolidge, Franklin Delano Roosevelt, Dwight D. Eisenhower, Harry S. Truman, and Clarence Darrow have some intrinsic value. I had some of them framed both because I thought they were interesting and also as a reminder to everyone in the office, including myself, of the historic role the office has played. My thought on seeing the actual documents signed by President Eisenhower granting pardons to several persons in the 1950's was that OPA staff in that era probably worked hard on the cases and if they "got them right" then, it was our responsibility to get our cases "right" today.

I was unaware of any regulation that I could not have these documents framed and

displayed, and in fact two of the persons who made complaints about this matter actively and enthusiastically participated in it. For example, [REDACTED] found several of the documents and suggested that at least one of them was a good candidate for framing and display. For his part, [REDACTED] as the holder of OPA's government credit card, used it to pay for the framing. [REDACTED]

[REDACTED]. Moreover, near the end of Fiscal Year 2006, he told me that we would have a small surplus of unexpended funds and asked if I wanted to use some of it for framing another document. (I declined this offer.) I might also note that [REDACTED] pointed out these documents proudly to office visitors on at least one occasion, and they have received favorable comments from a former Deputy Attorney General who saw them during an office visit. In short, the regulation that apparently prohibits their framed retention was not widely known. While I think that overall my stewardship of these nine documents at least improved on the practice of my predecessors over the last half-century of allowing them to sit in file drawers, I will nevertheless contact NARA to see if they should be transferred there, or if the provisions of 36 C.F.R. § 1228.54(b), quoted in the draft report as allowing retention beyond the normal 25 years "because of special circumstances which alter the normal administrative, legal, or fiscal value of the records," are applicable."

[REDACTED]

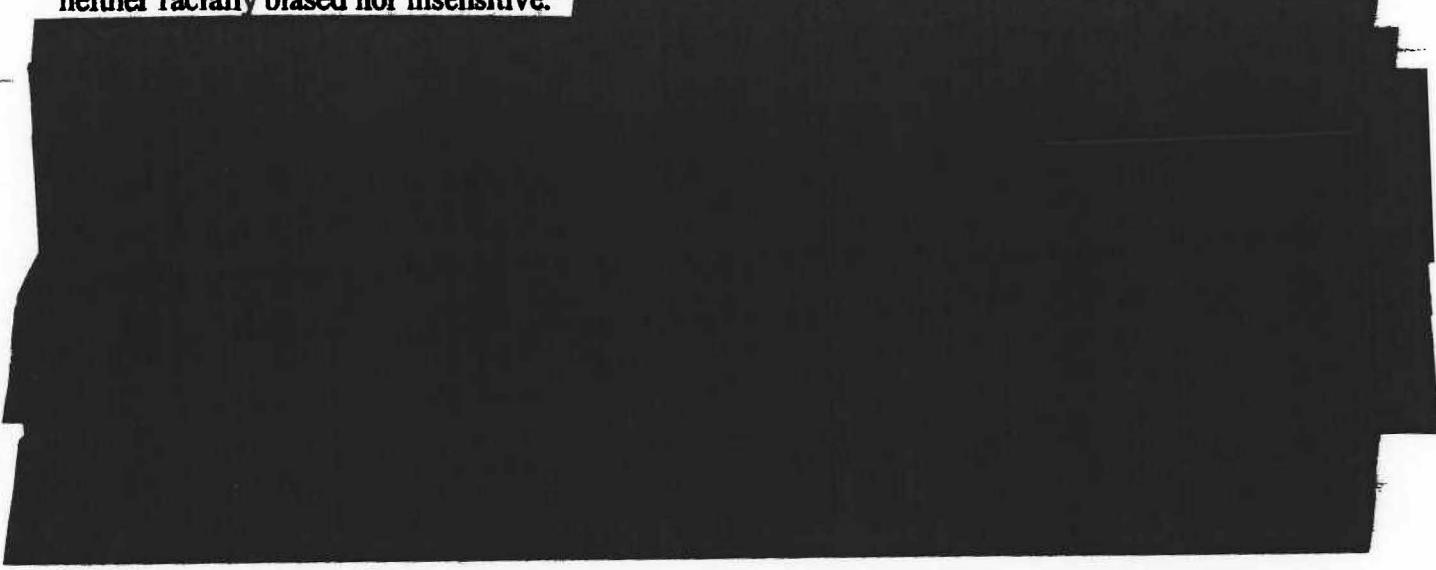
[REDACTED]

**ENTIRE PAGE
REDACTED**

to 2000. More generally, such statements in the draft report fail to reflect that I have, in fact, made numerous changes to the work of the administrative staff over the years in response to changes in the workload and other requirements. I would submit that this is the very opposite of the "hands off" management style attributed to me in the draft report.

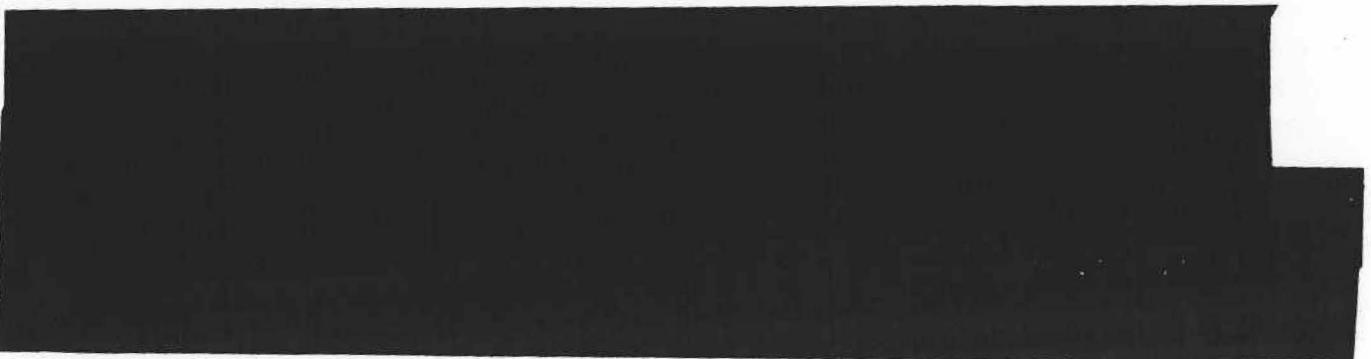
Conclusion.

Initially, for the reasons set out above, I hope that the draft report will be amended to delete any findings that I consider race in a negative way in deciding whether to recommend clemency. Moreover, as any person who has known me for any length of time will attest, I am neither racially biased nor insensitive.³⁰



Second, I hope that the final report will conclude that I have not retaliated against or threatened anyone, either five or six years in advance of the allegations having been made or afterwards. Although it has been difficult to endure the contempt and disrespect of [REDACTED] that they have exhibited toward me from the moment this investigation began, I have said not one word to them about it.³¹ Moreover, I have not altered the number or they types

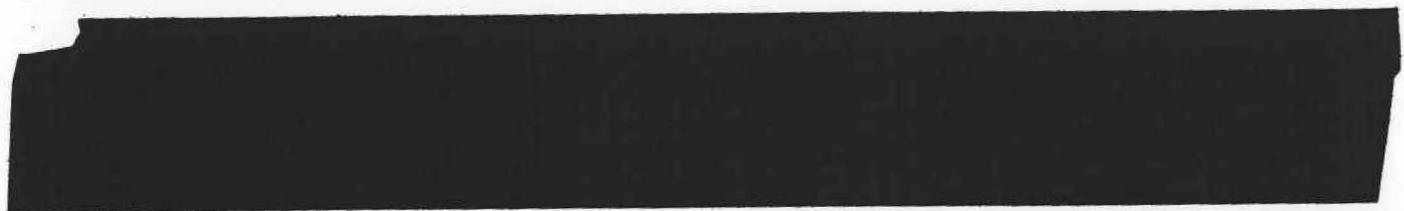
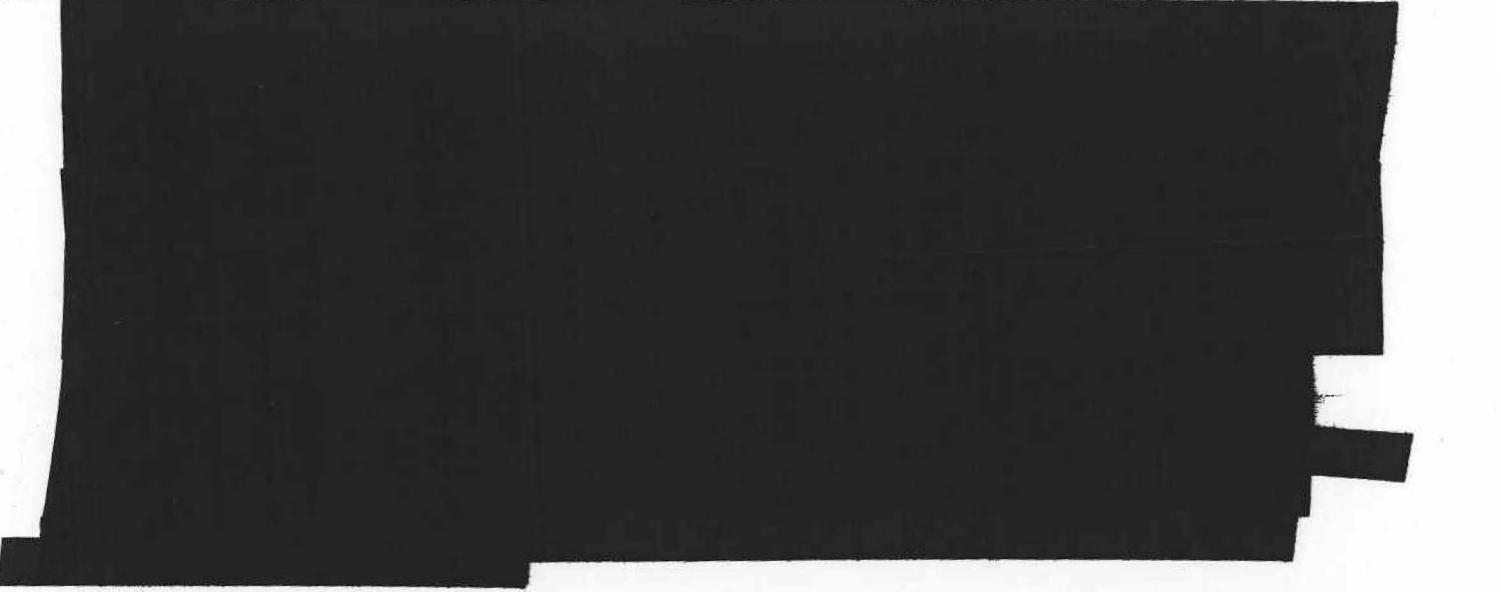
³⁰I do not claim to be perfect and, like most persons, probably have some faults, but racial prejudice is not one of them.



of cases assigned to [REDACTED] While I will be making some changes to [REDACTED] duties in the near future, this is because the CEO will be performing some of the administrative tasks that she has done, and is not intended to retaliate.

Third, although I doubt that all components of the Department hold all their employees to no more than a 30 minute lunch period every working day, I will ensure that no one in my office combines a lunch period with a break and that they submit leave slips if they do so.³²

Fourth, I will check with NARA to see about disposing of the framed documents. If there is no applicable exception to the regulation cited in the draft report, I will have them boxed up and sent out to NARA, where they will no doubt repose in it's warehouse-type facility near the University of Maryland.



Attachment

**cc: David Margolis
Associate Deputy Attorney General**